IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.408 OF 2006
WITH
CIVIL APPLICATION NO.496 OF 2006

M/s.Unitech Atomobiles Pvt.Ltd. ..Appellant.

V/s.

M/s.Carewell Printers Pvt.Ltd. & Ors. ..Respondents.

Mr.P.K.Dhakephalkar for M.H.Ahooja for appellant.

Mr.I.S.Badigannavar for respondent Nos.1 to 4.

Mr.Sanjiv Deshpande for respondent No.4.

Mr.Y.S.Jahagirdar, Sr.Advocate with Mr.Mehtaf i/b Malvi Ranchoddas & Co. for respondent No.6.

Mr.D.P.Adsule, AGP for respondent No.8.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 16, 2006.

P.C. :

1. In view of the fact recorded in paragraph-2 and 3 of the order passed by the IInd Jt.Civil Judge, Senior Division, dated 27th April, 2006 below Exh.5 in Special Civil Suit No.80 of 2006, prima facie, it is a case of contempt of court committed by the advocate appearing for the appellant before the lower court. Issue show cause notice to Advocate Ahooja as to why this court should not proceed to initiate appropriate action including for having committed contempt of the court. Show Cause notice made

returnable on 3rd July, 2006. Mr.Ahooja is present in the Court and waives notice.

2. The advocate for respondent No.5 and 6 Shri Deshpande, who was also present in the trial court submits that he may be allowed to place on record affidavit regarding the background in which the matter was argued by the counsel for the plaintiff before the trial Court in threatening tone, as is noted by the learned Judge. That affidavit can be considered when the response to the show-cause notice is received from Mr. Ahooja, advocate for the plaintiff. It will be also open to Ms.Bhardwaj, advocate who had appeared for defendant Nos.1 to 4 before the trial Court to file affidavit on similar lines.

3. Office to treat this proceedings as Suo Motto proceedings initiated by this court.

4. Reverting to the merits of the appeal, heard counsel for the parties. This appeal from order takes exception to the decision of the IInd Jt.Civil Judge, Sr.Division, Thane dated 27th April, 2006 below Exh.5 in Special Civil Suit No.80 of 2006. By this order the trial Court has refused to grant

ad-interim relief, as prayed by the plaintiff/appellant. Indeed, during the pendency of this appeal, order of status quo came to be passed on 22nd May, 2006 by the Vacation Judge, which is continuing till date.

5. Ordinarily, this Court would have continued the order of status quo requiring the trial Court to decide the Notice of Motion on its own merits expeditiously. However, I find substance in the stand taken by the respondent No.6 that this is not a case for continuing order of status quo. This is so because, the suit instituted by the plaintiff is for relief of specific performance. The respondent No.6 although has been impleaded in the suit, there is no lis with the plaintiff. The respondent No.6 has purchased the suit property by registered sale certificate in proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which was filed against the respondent No.1 to 5. Respondent No.5 at all material time is the mortgagee of the property and respondent Nos.1 to 4 had only the equity of redemption. The respondent No.5 in enforcement of their right as the mortgagees transferred the property to respondent No.6 by

registered sale deed dated 5th January, 2006. Thus understood, the question of granting order of status quo does not arise. The appellant/plaintiff is not entitled for any interim relief at this stage of proceedings.

6. Suffice it to observe that the application for temporary injunction, which is pending before the trial Court be considered on its own merits in accordance with the law. It appears that the trial Court has framed preliminary issue regarding the jurisdiction of the said court to try and decide the suit as presented before that court having regard to the frame of that suit. In that case the said issue will have to be considered on its own merits in the first instance. This appeal is therefore, dismissed.

7. It is once again made clear that the proceeding pending before the lower Court will be decided on its own merits in accordance with the law. Ad-interim order granted by this court stands vacated.

8. Suo moto show cause notice is issued on the basis of observations made by the trial Judge in the impugned order, will be listed on 3rd July, 2006.

9. Civil application disposed of accordingly.